IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al.	:	CASE NO. C-1-01-528
Plaintiffs	:	(Judge Spiegel)
vs.	:	
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al.	:	
	:	
Defendants		

REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL

Defendants Hamilton County, Ohio, Neyer, Jr., Dowlin, Portune, and Pfalzgraf's argument in the response they filed opposing Plaintiffs' Motion for Voluntary Dismissal is shameful. It is an embarrassment to have to respond. Defendants' arguments opposing Plaintiffs' motion are feckless. Plaintiffs' motion should be granted as requested by them.

MEMORANDUM IN SUPPORT

What said defendants fail to grasp is that it was the County's agents who instigated the instant action against said defendants. The County's representatives informed Plaintiffs, the siblings of the decedent , of misconduct and illegal conduct involving their loved one as his corpse lay in what Plaintiffs thought was a secure and safe place. It was the County's representatives who informed Plaintiffs that Defendants Tobias and Condon took liberties with their brother's corpse while he was in the care, custody, and control of said defendants. Further, it was the County's agents who successfully prosecuted Defendants Tobias and Condon at the trial court level; further enforcing the notion they communicated to Plaintiffs that their loved one's corpse was improperly handled and abused while his body was in the care, custody, and control of said defendants. It was the County's own agents and employees (Terry Daly and Rhonda Groh) who testified in deposition in this action that the camera used by Defendant Tobias to take the grotesque photograph displayed to Plaintiffs by the County's agents during the criminal prosecution was not an authorized camera to be used for any official purpose in the County's morgue facility. It was the County's own agents and employees (Terry Daly and Rhonda Groh) who testified in deposition in this action that any outside development of film by the County's morgue personnel was not authorized to be done at Defendant Condon's studio as was done by Defendant Tobias. It was the County's agents and employees (Terry Daly and Rhonda Groh) who testified in deposition in this action that the grotesque photograph found at Defendant Condon's was not part of the "official" file maintained by the County's morgue concerning Plaintiffs' loved one, Perry Melton.

Simply put, the County's own actions, through it's agent and employee, set up the situation which forced Plaintiffs to file suit to get to the "truth" of what happened to their brother while his body was ostensibly being protected by the County's agents. Indeed, until Defendant Tobias' conviction was overturned by the First District Court of Appeals for Hamilton County, Ohio, he would not even provide testimony to explain who took the grotesque photograph and why it was found on the premises of Defendant Condon's studio by the Cincinnati Police officers when they executed their search warrant of Defendant Condon's studio and home. Plaintiffs should not now be called upon to pay anything to said defendants (or for that matter, any of the other named defendants in this action). They have incurred tremendous expense to find the truth and while they do not understand how it came to be that their brother's body was violated by having a grotesque photograph taken by a Fellow (Defendant Tobias), using a camera that was not authorized to be used for official photographs of those decedents in the care, custody, and control of said defendants, developing the grotesque photograph at a studio not sanctioned by the County's morgue to be used for developing "official" photographs, and then leaving said grotesque photograph in a place open to the public (Defendant Condon's studio being a public place where his customers would be present and readily able to view the photograph in question of Plaintiffs' loved one) without any controls over the dissemination of the photograph.

They argue their expense but do not mention that but for the County's failure to properly protect their brother from such invasion, Plaintiffs would not have incurred their own significant expenses in prosecuting this action in order to learn the truth of what happened to their brother. Plaintiffs believe that their case against Defendants has merit. However, now that Plaintiffs have learned the truth, they do not wish to continue the instant litigation and they do not wish to subject themselves to any further proceedings, including but not limited to a trial.

Plaintiffs note that Defendants agree that their exercise of this process to dismiss their action pursuant to Fed. R. Civ. Pro. 41(a)(2) is within the sound discretion of this Court. They even cite the case which holds such. Plaintiffs posit that granting the motion filed with this Court will be within the sound discretion of this Court.

Plaintiffs also take exception to Defendants' reliance on the *Ali* and the *Grover* cases. Neither court in the cited cases was faced with the outrageous circumstances presented in this case. Neither were faced with situations where the defendants' own agents informed the plaintiffs therein that wrongful, illegal, and criminal acts occurred involving their loved ones such as what occurred in the present case. Defendants' callousness in seeking money damages against Plaintiffs in this case is further exacerbating an already difficult and hurtful situation with which Plaintiffs must contend.

Accordingly, Plaintiffs urge the Court to abide the suggestion of Defendant Tobias' counsel and allow them to dismiss their case without prejudice and without conditions which would force them to incur yet additional expense than what they have already been forced to incur due to the conduct said defendants' own agents declared was wrongful, illegal, and criminal. Plaintiffs hereby move this Honorable Court to enter an order permitting them to voluntarily dismiss this action without prejudice pursuant to Fed. R. Civ. Pro. 41(a)(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served on opposing counsel by electronic service through the CM/ECF filing program at their respective e-mail addresses by this 7th day of June, 2004.

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